

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
John R. Quain	)	FOIA Control No. 2011-584
	)	
On Request for Inspection of Records	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** June 11, 2012

**Released:** June 13, 2012

By the Commission:

**I. INTRODUCTION**

1. The Commission has before it an Application for Review filed by John R. Quain (Quain)<sup>1</sup> seeking review of a Freedom of Information Act (FOIA) decision of the Investigations and Hearing Division (Division) of the Enforcement Bureau (Bureau).<sup>2</sup> The *Decision* stated that the Bureau had located no documents responsive to Mr. Quain's FOIA request<sup>3</sup> relating to a Consent Decree entered into between the Commission and Clear Channel Communications, Inc. (Clear Channel),<sup>4</sup> but provided a web link to an unsigned copy of a letter that Mr. Quain had also requested. We affirm the Bureau's conclusion that there are no documents responsive to Mr. Quain's request, and we deny his Application for Review.

**II. BACKGROUND**

2. Mr. Quain's *Request* sought documents relating to the Commission's "monitoring of compliance with the Consent Decree" that the Commission entered into with Clear Channel in 2007.<sup>5</sup> Mr. Quain also requested "documentation from the signatories showing the number of hours broadcast and the

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<sup>1</sup> See letter from John R. Quain to Austin Schlick, Esq., General Counsel, Federal Communications Commission (FCC) (Jan. 13, 2012) (*AFR*); see also email from JR Quain to FOIA (Jan. 20, 2012).

<sup>2</sup> See letter from Judy Lancaster, Esq., Investigations and Hearing Division, Enforcement Bureau, FCC, to John R. Quain (Dec. 22, 2011) (*Decision*).

<sup>3</sup> See email from John R. Quain to FOIA at 1 (Sept. 26, 2011) (*Request*) and email from John R. Quain to Judy Lancaster (Oct. 25, 2011) (*Supplement to Request*).

<sup>4</sup> See *Clear Channel Communications, Inc., Order*, 22 FCC Rcd 7875 (2007) (*Order*). The *Order* approving the Consent Decree was adopted on March 21, 2007, and released on April 13, 2007. The Consent Decree terminated the investigations initiated by the Bureau against Clear Channel as to whether Clear Channel and its direct and indirect subsidiaries that hold FCC authorizations (collectively, the Company) may have violated the sponsorship identification requirements set forth in Sections 317 and 507 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 317 and 507, and Section 73.1212 of the Commission's rules, 47 C.F.R. § 73.1212. As part of the Consent Decree, the Company agreed to adopt a new plan to enhance the effectiveness of the Company's efforts to deter employees from engaging in conduct that violates the sponsorship identification laws and to make a voluntary contribution to the United States Treasury in the amount of \$3,500,000.00.

<sup>5</sup> *Request* at 1.

call letter of the stations on which they broadcast local artists fulfilling thier [*sic*] obligations.”<sup>6</sup> Mr. Quain requested copies of any communications from the Commission demanding compliance with the Consent Decree or “acknowledgement that demands were not made upon the violaters [*sic*] . . . and [c]opies of any [w]rits of [m]andamus seeking FCC enforcement[.]”<sup>7</sup> Mr. Quain also sought a letter to the Commission dated April 6, 2007, in which Clear Channel “acknowledge[s] an obligation of 1600 h[ou]rs of broadcast airtime for local and independent artists with the remaining thousands of hours divided amongst the other sign[a]tories to the decree [*i.e.*, CBS Radio, Inc., Citadel Broadcasting Corporation, and Entercom Communications Corp].”<sup>8</sup>

3. The Bureau advised Mr. Quain that it had searched the records maintained by the Division, which document investigations dating back to approximately January 2002, and related records maintained by other offices in the Commission, but had found no documents responsive to Mr. Quain’s FOIA request.<sup>9</sup> The Bureau did, however, provide a link to a third party web site containing an unsigned copy of the April 6, 2007 letter that Mr. Quain had requested.<sup>10</sup> The Bureau stated that if Mr. Quain believed that the Bureau had failed to locate particular responsive materials, Mr. Quain should describe them with specificity and the Bureau would again try to locate them.<sup>11</sup>

### III. APPLICATION FOR REVIEW

4. In his Application for Review, Mr. Quain questions whether the Commission in fact has a copy of the *April 6, 2007 Letter* in its possession.<sup>12</sup> In addition to questioning the thoroughness of the Commission’s search of its records for the *April 6, 2007 Letter*, Mr. Quain requests additional documents for the first time in the instant filing. Mr. Quain now requests for the first time all records in Commissioner McDowell’s archives informing him of the broadcasting commitment, as well as any records in Commissioner Adelstein’s archives relating to the Radio Companies’ negotiation of the commitment and to any communications with the Future of Music Coalition concerning the negotiation.<sup>13</sup> He seeks records reflecting “the expressed intent of the Commission to directly benefit independent artists as stated by the Commissioners in their Statements.”<sup>14</sup> Mr. Quain asks whether then-Chairman Kevin Martin’s staff “recognize[d] the [April 6, 2007] letter as a proposal or agreement[.]”<sup>15</sup> Finally, Mr. Quain

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Supplement to Request* at 1.

<sup>9</sup> *See Decision* at 1.

<sup>10</sup> *Id.* (citing <http://futureofmusic.org/sites/default/files/FCCclearchannelcomplaint.pdf>). The link is to a document entitled Request for Declaratory Ruling dated July 13, 2007 (*Request for Declaratory Ruling*), which includes as an attachment an unsigned letter dated April 6, 2007 (*April 6, 2007 Letter*), from Clear Channel, CBS Radio, Inc., Citadel Broadcasting Corporation, and Entercom Communications Corp. (the Radio Companies) to the Chairman and the Commissioners, stating that the Radio Companies had voluntarily elected to air on a collective basis 4,200 hours of programming featuring “the recordings of local, regional and unsigned artists and artists affiliated with independent labels.” *April 6, 2007 Letter* at 1 (stating that “[t]hese voluntary actions are being taken separately and apart from the Consent Decree”). The Commission’s Electronic Comment Filing System does not include a copy of the *Request for Declaratory Ruling*.

<sup>11</sup> *See Decision* at 1.

<sup>12</sup> *AFR* at 1.

<sup>13</sup> *AFR* at 1; *see also id.* at 2 (requesting any “drafts, emails, memos, or any other forms of communications recording the give and take, suggestions or proposals normally associated with negotiations”).

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.* at 1.

asserts that the *Decision* failed to address his request for “an index of documents which the signatories requested be kept confidential to determine their applicability to this matter.”<sup>16</sup>

#### IV. DISCUSSION

5. We deny the Application for Review. The Commission’s staff conducted a reasonable search of the records maintained by the Enforcement Bureau’s Investigations and Hearing Division, as well as the records maintained by the Chairman’s and Commissioners’ offices. The search was designed to locate records responsive to Mr. Quain’s *Request*. The search found neither the original nor copies of the *April 6, 2007 Letter* nor any other documents responsive Mr. Quain’s original FOIA request.<sup>17</sup> We find the Bureau’s search was adequate. Mr. Quain provides no basis for us to instruct the Bureau to continue searching.<sup>18</sup> With respect to the other documents Mr. Quain requests for the first time in his Application for Review, we find that they are beyond the scope of his original FOIA request, which focused on compliance with the Consent Decree, rather than the negotiation of the Consent Decree. An Application for Review will not be granted if it relies on questions of law or fact upon which the Bureau has been afforded no opportunity to pass.<sup>19</sup>

#### V. ORDERING CLAUSES

6. IT IS ORDERED that the Application for Review filed by John R. Quain IS DENIED. Mr. Quain may seek judicial review of this action pursuant to 5 U.S.C. § 552(a)(4)(B).<sup>20</sup>

7. The following officials are responsible for this action: Chairman Genachowski and Commissioners Clyburn, McDowell, Pai, and Rosenworcel.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>16</sup> *Id.* We note that Mr. Quain did not request any such index in the *Request* or in the *Supplement to Request*.

<sup>17</sup> Mr. Quain asks whether “a computer search [was] the sole method used” to locate the letter. *AFR* at 1. Commission staff conducted a physical search as well as an electronic search for the records.

<sup>18</sup> *See Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983) (“The issue is not whether additional documents might conceivably exist but whether the search was adequate”).

<sup>19</sup> *See* 47 C.F.R. § 1.115(c).

<sup>20</sup> We note that as part of the Open Government Act of 2007, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect Mr. Quain’s right to pursue litigation. Mr. Quain may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 301-837-1996  
Facsimile: 301-837-0348  
Toll-free: 1-877-684-6448